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**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Iyer Shankar

Serial No. 75/566,613

Ezra Sutton for Iyer Shankar.

John T. Lincoski, Jr., Trademark Examining Attorney, Law
Office 104 (Sidney Moskowitz, Managing Attorney).

Before Cissel, Hanak and Hairston, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

Iyer Shankar (applicant) seeks to register in typed
drawing form SMILE USA for "conducting seminars for
education and training in the dental field" (Class 41) and
"providing dental care services" (Class 42). The
application was filed on October 6, 1998 with a claimed
first use date as to both types of services of March 1,
1997. In the first Office Action, the Examining Attorney
stated that the USA portion of applicant's mark was
descriptive and must be disclaimed. Thereafter, applicant
submitted a disclaimer of the exclusive right to use USA
apart from the mark in its entirety.

Citing Section 2(d) of the Trademark Act, the Examining Attorney has refused registration on the basis that applicant's mark, as applied to applicant's services, is likely to cause confusion with two marks previously registered to the same entity for "dental care services." The first mark is SMILE AMERICA depicted in typed drawing form. Registration No. 1,206,574. The second mark is SMILE AMERICA depicted in a decidedly stylized form. Registration No. 1,211,930. In Registration No. 1,206,574 there is a disclaimer of AMERICA.

When the refusal to register was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request an oral hearing.

Because the mark of Registration No. 1,206,574 (SMILE AMERICA in typed drawing form) is more similar to applicant's mark than is the mark of Registration No. 1,211,930 (SMILE AMERICA in decidedly stylized form), we will focus our likelihood of confusion analysis upon a comparison of the first registered mark and applicant's mark.

In any likelihood of confusion analysis, two key, although not exclusive, considerations are the similarities of the marks and the similarities of the goods or services.

Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks.").

Because the application is a multi-class application, we will conduct two separate likelihood of confusion analyses. With regard to applicant's Class 42 services (providing dental care services), despite differences in terminology, these services are identical to services of Registration No. 1,206,574 (dental care services).

Considering next the marks, we note at the outset that when the services are legally identical, as is the case here, "the degree of similarity [of the marks] necessary to support a conclusion of likely confusion declines."

Century 21 Real Estate Corp. v. Century Life of America, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

Obviously, both applicant's mark and the cited mark begin with the identical word SMILE and then conclude with the word USA (applicant's mark) or AMERICA (registrant's mark). We find that USA and AMERICA convey the same connotation, and thus that the marks are quite similar in terms of overall commercial impression. In so doing, we wish to make clear that we have considered the two marks in

their entireties. In re National Data Corp., 753 F.2d 1056, 224 USPQ 749, 750 (Fed. Cir. 1985). However, in their entireties the two marks do convey the same commercial impression. Moreover, we note that because the USA and AMERICA portions of the two marks were disclaimed, this indicates that they are merely descriptive of dental care services which are rendered in this country. Thus, it is entirely appropriate in our likelihood of confusion analysis to give "less weight" to the USA and the AMERICA portions of the marks, and more weight to the arbitrary and identical portion of the marks, namely, SMILE. National Data, 224 USPQ at 751.

In short, we find that when used on identical services, applicant's mark SMILE USA is likely to cause confusion with the registered mark SMILE AMERICA.

Turning to a consideration of applicant's Class 41 services (conducting seminars for education and training in the dental field) and registrant's services (dental care services), we likewise find that there exists a likelihood of confusion. In this regard, we note that the Examining Attorney has made of record numerous third-party registrations which cover both dental care services and various forms of training and education in the dental field. Thus, the services of conducting seminars for

education and training in the dental field, on the one hand, and providing dental care services, on the other hand, are clearly related. In re Mucky Duck Mustard Co., 6 USPQ2d 1467 (TTAB 1988), aff'd as not citable precedent 88-1444 (Fed. Cir. November 14, 1988). In view of the foregoing, we find that an ordinary consumer familiar with registrant's SMILE AMERICA dental care services would, upon seeing applicant's mark SMILE USA used in conjunction with an educational seminar in the dental field, assume that both services originated from the common source, or that at a minimum, both sets of services were in some way associated. Of course, it need hardly be said that to the extent that there are doubts on the issue of likelihood of confusion, said doubts must be resolved in favor of the registrant. In re Shell Oil Co., 992 F.2d 1204, 26 USPQ2d 1687, 1691 (Fed. Cir. 1993).

Applicant has made of record numerous third-party registrations for various types of dental services wherein the marks include the word SMILE. Two comments are in order. First, none of these third-party marks are as similar as are the marks SMILE USA and SMILE AMERICA. Second, there is no evidence of record demonstrating the extent of use of these third-party marks. Therefore, we cannot assume that the term SMILE is "dilute" as contended

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by the applicant. Smith Bros. Mfg. Co. v. Stone Mfg. Co.,
476 F.2d 1004, 177 USPQ 462, 463 (CCPA 1973).

Decision: The refusal to register is affirmed as to
both classes of services.